

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33**

SPRINGFIELD URBAN LEAGUE, INC.

and

**Case 25-CA-248142
25-CA-248144
25-CA-258335**

**AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME),
COUNCIL 31, AFL-CIO**

**RESPONDENT’S REPLY TO ACTING GENERAL COUNSEL’S OPPOSITION TO
RESPONDENT’S MOTION FOR PARTIAL DISMISSAL OF THE COMPLAINT**

COMES NOW, the Respondent, SPRINGFIELD URBAN LEAGUE, INC., by and through its attorneys, Giffin, Winning, Cohen & Bodewes, P.C., and for its *Reply to Acting General Counsel’s Opposition to Respondent’s Motion for Partial Dismissal of the Complaint*, states as follows:

1. Paragraphs 7(a) and 7(c) of the Consolidated Complaint allege failure to bargain regarding subcontracting.
2. Paragraphs 8(f) and 8(g) of the Consolidated Complaint allege Respondent failed to respond to information requests.
3. Paragraph 10 of the Consolidated Complaint specifically states, “By the conduct described above in Paragraphs 7(a), 7(c), 8(e) and 8(f) Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and 8(a)(5) of the Act.”
4. Paragraph 5 of the Consolidated Complaint alleges Respondent’s representative modified bargaining proposals in response to bargaining unit members exercising their rights to arbitration.

5. Paragraph 9 of the Consolidated Complaint specifically states, “By the conduct described above in paragraphs 5(a), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.”

6. General Counsel has amended the complaint to include additional allegations. General Counsel did not substantively amend the existing allegations.

7. Contrary to General Counsel’s Brief in Opposition, the Complaint does not allege failure to bargain in good faith with respect to allegations regarding modification of proposal.

8. The complaint must be sufficient to put the respondent on notice of the allegations to put on his defense. *NLRB v. Piqua Munising Wood Prods. Co.*, 109 F.2d 552, 557 (6th Cir. 1940).

9. The Complaint explicitly alleges two (2) separate and distinct legal theories and parcels them out.

10. There is a difference between a purely Section 8(a)(1) unfair labor practice and a Section 8(a)(5) unfair labor practice, which includes a derivative Section 8(a)(1) unfair labor practice.

11. The first prong of the closely related test requires the otherwise untimely allegations to have the same legal theory as the allegations in the timely charge. *Redd-I, Inc.*, 290 NLRB 1115 (1988). The third, non-mandatory prong of the closely related test looks at the similarity of defenses between the untimely and timely charge allegations. *Id.*

12. Section 8(a)(1) makes it an unfair labor practice for an employer to “interfere with, restrain, or coerce employees” who exercise their rights under Section 7 of the NLRA. An employer’s adverse action is a Section 8(a)(1) unfair labor practice if (1) the employer knew of the

concerted nature of the employee's activity; (2) the concerted action was protected under Section 7; and (3) the employer's adverse action was because of, or motivated by the protected concerted activity. *Reef Indus., Inc. v. N.L.R.B.*, 952 F.2d 830, 835–36 (5th Cir. 1991).

13. An employer charged with a Section 8(a)(5) unfair labor practice is necessarily charged derivatively with a Section 8(a)(1) unfair labor practice. *NLRB v. Ingredion Inc.*, 930 F.3d 509, 513 (D.C. Cir. 2019). However, the requirements to prove a Section 8(a)(5) unfair labor practice is different from a standalone Section 8(a)(1) violation; “The Board will find that an employer has violated its duty to bargain under § 8(a)(5) of the Act if the employer has failed to bargain in good faith with a union, or if it has engaged in a per se violation of its duty to bargain, regardless of its good faith.” *Frankl v. HTH Corp.*, 650 F.3d 1334, 1358 (9th Cir. 2011). *Internal citations omitted.*

14. The two types of unfair labor practices are separate legal theories and require separate and different defenses. The Initial Charge in Case 25-CA-248144 alleged a failure to bargain in good faith. The Amended Charge in Case 25-CA-248144 and subsequent Consolidated Complaint alleged a violation of the employee's protected concerted activity. Therefore, the Initial Charge in Case 25-CA-248144 and the Amended Charge in Case 25-CA-248144 upon which the Consolidated Complaint is based are not closely related.

15. Additionally, if the Initial Charge Case 25-CA-248144 in fact already encompassed the allegations in the Complaint, there would be no need for the Initial Charge to be amended. The act of amending the Initial Charge in Case 25-CA-248144 is evidence itself that the Initial Charge did not sufficiently include the act by Cassondra Bacon put forth in the Charging Party's Response and is necessarily not closely related to the allegations in the Consolidated Complaint.

16. Therefore, the allegations and charges related to the modification of a proposal as a Section 8(a)(1) unfair labor practice, Paragraphs 5 and 9 of the Consolidated Complaint, should be dismissed for untimeliness.

17. The Charging Party's Response does not raise an objection to the postponement of the hearing to resolve the *Motion for Partial Dismissal of the Complaint*. See NLRB Rule §102.24(b).

WHEREFORE, the Respondent, Springfield Urban League, Inc., respectfully requests the Board grant the Respondent's Motion for Partial Dismissal of the Complaint in its favor.

Respectfully Submitted,

SPRINGFIELD URBAN LEAGUE, INC.,
Respondent

By: _____

One of Its Attorneys

Dated: February 2, 2021

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CERTIFICATE OF SERVICE

Samantha A. Bobor, an attorney, hereby certifies that on February 2, 2021, she caused a copy of the foregoing *Reply to Acting General Counsel's Opposition to Respondent's Motion for Partial Dismissal of the Complaint* to be served by email on the following:

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